

ANDREA ARMSTRONG: Yeah, my ex-husband's out there.

THE COURT: ...would you prefer to take the afternoon recess so that you can, perhaps, take more of your medication or whatever you need? Do you want to do it now?

ANDREA ARMSTRONG: Yes, please.

THE COURT: We will take 15 minutes. Thank you. No discussion with any other witnesses, okay?

CHELSEA VOTEARY: Okay.

THE COURT: Thank you.

R E C E S S

U P O N R E S U M I N G :

THE COURT: Thank you. Who is your next witness?

ANDREA ARMSTRONG: Cameron Armstrong out in the hallway.

THE COURT: And, again, you may remain seated while questioning your witnesses.

ANDREA ARMSTRONG: There's one thing. The lady from Telus is still here. I'm not gonna' need her package that shows these text messages.

THE COURT: So you do not need her here at this point?

ANDREA ARMSTRONG: Now, is she allowed to give me that package that I summonsed? It's my information.

THE COURT: Well, whether or not it would go

Defense Witness Exhibits:

Telus Text Messages between Complainant & Defendant

in as evidence or be relevant, of course, is another question. Do you want to call her as a witness now?

ANDREA ARMSTRONG: Can I call her as a witness and just go through Carkner's statement?

THE COURT: I am sure that your friend will be content to simply allow that stuff to be filed...

MS. EBERHARD: I have told....

THE COURT: ...and I would determine the relevance of it.

MS. EBERHARD: That's absolutely fine. I....

THE COURT: That is acceptable?

MS. EBERHARD: Absolutely.

THE COURT: Get the material from your witness.

ANDREA ARMSTRONG: Okay.

THE COURT: File it as an exhibit. I will be able to review it. I understand how these are recorded.

ANDREA ARMSTRONG: It's a lot smaller than the package. I paid a hundred and fifty bucks to get.

COURTROOM CLERK: Exhibit one, Your Honour?

THE COURT: Let me just have a look at it and then I will determine whether the witness can leave.

ANDREA ARMSTRONG: Where did I put Carkner's statement?

THE COURT: Staple them, Madam Clerk. They will be the next exhibit.

Telus Text Messages finally entered as evidence *Improperly*

Defense Witness 2 Testimony: *Cameron Armstrong*

EXHIBIT NUMBER 1 - Documentation from Telus -
Produced and marked.

THE COURT: The witness in this matter, if
everyone is agreeable, is free to go. I have
read the text messages as you can see and I
can see how the dialogue progressed. Your
next witness, please? The witness who is here
for Telus is free to go.

FEMALE VOICE FROM THE BODY OF THE COURT:
Thank you.

THE COURT: Thank you for your attendance,
Madame.

ANDREA ARMSTRONG: Well, I guess, I'll be
calling Cameron Armstrong.

...PAGING CAMERON ARMSTRONG.

THE COURT: Will you come up here, please,
sir.

CAMERON ARMSTRONG: SWORN

THE COURT: Thank you. You may stand or be
seated, as a witness, and, Ms. Armstrong, you
can stand or be seated and change your mind,
as well.

CAMERON ARMSTRONG: Thank you.

ANDREA ARMSTRONG: Okay.

THE COURT: You can change your mind, as
well, too.

CAMERON ARMSTRONG: Thank you.

EXAMINATION IN-CHIEF BY ANDREA ARMSTRONG:

Q. I guess, I should get Cameron to introduce who he is to me.

A. Um, I'm your ex-husband.

5 Q. Our divorce is still before the courts, not quite done yet. Um, you have seen me be physically, um, threatened and assaulted in the past.

A. Yes, I have.

10 Q. How do I, generally, behave? What are my abilities when I'm threatened physically?

A. You, um, - you cringe. You fall into yourself. You don't get violence(sic). I've never seen you get violent with anybody. You don't even get violent with your kids.

15 Q. Um, the day before February 10th, we had an altercation. I'd like to state my ex-husband has PTSD from serving in the army so violence is quite a regular thing with it. I've taken PTSD courses to deal with for him and stuff like that. How do I usually react when you assault me which doesn't happen on a regular basis?

20 A. Basically, the same way. You - you go back into yourself. You yell but you never - you never get physical. I've....

Q. Do I - have I ever tried to hit you back?

A. No, actually you haven't.

25 Q. Have I ever ranted and raved and gone on and on and on?

A. Absolutely.

Q. Okay. But I don't threaten you when I'm ranting and raving, right?

30 A. No.

Q. I'm not threatening to kill you or

anything, right?

A. No. No, you've never said that.

Q. Um, as far as Rachel Carkner, you are a
witness to the fact that she babysat on what - oh, wait,
5 sorry, no leading questions for my witnesses. What date do
you remember Rachel Carkner babysitting for us?

A. It was, uh, this past Boxing Day.

Q. And where were we going that we needed a
babysitter?

10 A. We, um, went to a party of your, uh, -
kind of a high school reunion thing in, uh, Richmond Hill,
Ontario.

Q. Okay. And is it unusual for me to have a
babysitter in my house?

A. Yeah, it doesn't happen very often.

15 Q. Okay. Um, since this babysitting on
December 26th, um, what happened to change your life in that
you ended up being in my house every day for the month of
January?

A. Well, I'm - I'm on Ontario Works and I was
20 collecting Ontario Works prior to that but they cut me off
and, um, I was getting some support from you in lieu of my -
I had a, um, - it's a, uh, like an appeal, um, to - to the,
uh, Social Services Tribunal and, um, so you were giving me
support. I was also, um, detoxing because I'm an alcoholic.

25 Q. But what had made you - before you were
never at my house all day long, what had happened that you
were at my house all day long all of a sudden? What did you
have to close?

A. Oh, sorry. Um, I owned a restaurant, so I
30 was - I was closing my restaurant and, uh, uh, that took a
lot of doing.

Q. Okay. Um, on August 14th, 15th or 16th when you were in my house, do you ever remember Rachel coming to babysit?

5 A. No, it was only the one time on Boxing Day.

Q. Do you ever remember anybody making any plans about a cell phone charger being - coming back? Did you ever read a message on the phone about it? Anything like that?

10 A. Yes, as a matter, I did.

Q. Okay. Was it - but that was after - what - at what point was that?

A. I can't remember the exact date but it was, um, - I believe it was in January or February. I'm - I'm unclear of the exact date.

15 Q. Okay. Was there various attempts at getting this cell phone charger back?

A. Yes, more than one.

Q. Would there be any reason for me to have something dropped off in my neighbour's mailbox?

20 A. No.

Q. Did I have any problems with my neighbours downstairs while I lived there?

A. Not that I'm aware of.

Q. Um, who were the two ladies that were living in the basement that, apparently, Rachel says I do not trust? Who was living in the basement at the time?

A. Um, I'm....

Q. Do you remember what they do for a living?

30 A. I - I forget their names but I do know that they're the daughter of the landlord - sorry, the daughters of the landlord.

Q. Do you remember where the one works and what the other one does in school?

A. Yeah, one, uh, - one attends school at, um, - part-time in Peterborough and the other time is, um, at Queen's in Kingston and, um, uh, the other one is some medical trade.

Q. Okay. So, basically, I had an MRI tech. and a teacher living in my basement and I never had any problems with them in regards to Rachel's statement...

10 A. No, actually,...

Q. ...so there...

A. ...they were....

Q. ...was never a reason...

A. Sorry.

15 Q. ...for me to have to get my mail dropped in anybody else's box. Uh, what - where am I still receiving mail even though I've moved?

A. You're still receiving at that address.

Q. Yeah. And who's picking it up for me?

A. I am.

20 Q. And it's, generally, quite a reliable mail delivery service?

A. Yeah, they're really nice ladies.

Q. Okay. Um, what types of things do I have difficulty doing in my everyday living because of my spinal arthritis?

A. Anything physical. I mean, you can't even open a pop can. You need help with that pop bottle, anything like that. Anything that involves, um, a twisting with - with the wrist, impossible for ya' to do.

30 Q. What do you have to remember when you put gas in the tank for me?

A. If I turn it one notch too many, you won't be able to get it off...

Q. Uh, uh.

A. ...and you'll have to ask somebody to...

Q. Uh, uh.

A. ... loosen it.

Q. And it's embarrassing. Um, was - did you see me with Rachel Carkner any other time...

A. No.

Q. ...than January 26th - I mean, December 26th?

A. No.

Q. Um, I don't think I have much more I can ask him. Oh, um, what kind of medication does my, uh, disabilities require...

A. Uh,....

Q. ...and how much does it cost a month?

A. I can't remember all of the prescriptions. Um, some are Lorazepam. Uh, there's a few other ones, but it's around about \$700.00 a month.

Q. What's the major one that costs \$700.00 a month?

A. It's, um, derivative of marijuana. I forget its name.

Q. And have you ever known anybody that's on \$700.00 worth of prescription marijuana be able to assault anybody?

A. No.

ANDREA ARMSTRONG: Thank you. I'm done, Your Honour.

THE COURT: Cross-examination?

MS. EBERHARD: No, I have none.

Submissions by Ms. Eberhard
Submissions by Andrea Armstrong

THE COURT: Thank you for your attendance.

You are free to go.

A. Thank you, sir.

THE COURT: Your next witness, please.

ANDREA ARMSTRONG: I'm done, sir.

THE COURT: Any evidence in reply?

MS. EBERHARD: No.

THE COURT: I will have the Crown argue first so she will know what she has to meet.

MS. EBERHARD: Your Honour has heard the evidence. In my respectful submission, the Crown has proven beyond a reasonable doubt all the elements of the offence of assault and, as such, I ask that Your Honour find Ms. Armstrong guilty.

THE COURT: Thank you. Submissions?

ANDREA ARMSTRONG: My submission is is that the evidence is totally contradictory. I don't think it comes out to a charge for assault I never did. Um, what really happened is that by those post text messages, you can show that we were desperately trying to get the cell phone charger back. It was never returned to us. My provocation for going to the warming room was to retrieve it. I took my two children with me. I text messaged a police officer who I regularly help out that I didn't realize was on holidays and asked for his assistance earlier in the day. I did not go there with any intent on assaulting anybody. Um, I've been studying pietism for the last 10 years and I try to live my life as

peacefully as I can in this crazy world. I walk in marches against Women for Violence. I've been doing legal advocacy for 20 years and helping a lot of...people, my ex-husband being my best, uh, client. Um, I do not have a violent history of any kind. Um, I reached into her bag and she hip checked me to get access to the bag. She made the first contact. Anything I did after that was just rowing away from the situation because I know I cannot defend myself and I'm not gonna' put myself in anymore pain because I can't take opiates because of a heart problem so I don't know if you've ever taken marijuana for labour contractions but that's what my spinal spasms are like and the marijuana just hits it on the little corner, doesn't quite get rid of it, you know, so I try not to do anything that increases my pain. Carkner's motive was to avoid detection of being in possession of the stolen property. That is why she hid it in the bathroom. That is proven because if I was, supposedly, trying to get her wallet, she would have hidden it, as well. The dates that she states to the police to have been around my house, the 14th, 15th and 16th'ish, there is a text message from Carkner on - okay, on the 12th - oh, on the 13th, I texted her, "Are you around? I'm too broke to buy another charger." Don't hear from her until - oh, I try again. "Are you around? I'm too broke to buy another charger." That's on the 13th.

Nothing from Rachel. Nothing from Rachel all day on the 13th. On the 14th, it was my friend, Maxine, that I asked to babysit. It was not Rachel and Maxine couldn't so my child babysat her younger sister. Um, on the 15th, I've sent another message to Rachel. "Chelsea will lose her phone number on Saturday if she can't recharge her phone for top up. Please contact ASAP." No response from that. On the 15th - then we get to the 18th and she is - oh, wait, where's the 17th? Sorry, just lookin' for something. There it is. On the 17th, I text message her again - or Chelsea does. "I need my phone charger now. You may as well just pay for another one if you're not gonna' give it back. Haven't had a phone in three weeks." Then she asked her Godmother if she can borrow her phone charger to charge her phone. Then on the 17th, Rachel gets back to me. "I have no money and I can't help it that I keep ending in the hospital." Third party identifier removed but she said she was in St. Mike's Hospital, so it's long distance for me. Um, then the next message from her is, "I have my own charger. I haven't been using Chelsea's. I just haven't been in town to give it to you." That's on the 18th when she's claimed to have dropped it off on the 14th, 15th or 16th, whatever. Um, then she claims that she - uh, another lady, a friend of Rachel's, called the hospital to see if she was actually in there and she wasn't so

5 there's text messages here about that, so then
Rachel then goes on to say that she's got two
last names and that's why nobody could find
her in the hospital. Um, this is where she
says that she has a cancerous tumour that she
needs to have removed. I mention here that I
would like - that my medicinal access place is
right around the corner from St. Mike's
Hospital and I could come and visit her to
10 pick up the phone charger and bring her some
slippers, trying to keep up with her lie about
being in the hospital. Anyhow, um, -
slippers, you don't need to hear about that.
And then something there that would be used in
another police investigation, if anybody asked
me, another false statement made to police by
15 someone else towards Rachel. Um, then she's
stating - she's saying that she's supposed to
be having surgery on Tuesday earlier but now
she's saying, "I should be back in town before
my surgery to get a few things. I was
supposed to be back today." That was the
18th. And then it gets all the way back over
to - did I do the first part where she admits
to actually taking the charger? Did I already
go through that?

20 THE COURT: I have read it.

ANDREA ARMSTRONG: Oh, you have read it? So
you know what it all is?

25 THE COURT: I have read all of those. You
noticed I took a fair amount of time going
through it. I have read them all.
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ANDREA ARMSTRONG: Okay, well, I have a private - I'm laying a private charge for making false statement to police and ...for theft, if anybody's interested in lookin' at it 'cause there's your evidence that you need for it. Anyway, um, basically, my provocation was to get property that was being refused my daughter. My daughter was pissing me around off of it and was gettin' sick of hearing about it so I went to go deal with it, did not expect ay kind of physical confrontation. I did, however, ask a man that was hanging around who turns out to be Tami's boyfriend - I asked him if he would follow me down, uh, to - 'cause I told him I couldn't defend myself and, you know, could he watch out that I don't get beaten up. Anyway, he wouldn't speak to the police because he's been in jail 43 times for assaults so I picked the wrong person to come down to watch this. However, that person is Tami Doherty's - the other witness's boyfriend.

THE COURT: I am not interested in that. I have not heard any of that evidence.

ANDREA ARMSTRONG: Well, because he's...

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THE COURT: I have not heard anything about....

ANDREA ARMSTRONG: ...left now. He left at lunchtime.

THE COURT: You are now just....

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ANDREA ARMSTRONG: I was gonna' try to get him in here.

Submissions by Andrea Armstrong

THE COURT: You are just starting to give evidence in argument. I just want to hear the argument...

ANDREA ARMSTRONG: Okay. Anyway, um,...

THE COURT: ...on the evidence that we have heard.

ANDREA ARMSTRONG: ...one of the warming room board directors overheard a conversation with this other person who did witness this and this warming room direct - uh, board member heard this man say that, no, he didn't see me hit anybody and he was right in the same area. Um, I can't even find the thing I had about my posing statements. I had it all written up. Um, I guess, I should talk about the contradictory statements. Um, Tami claims that I pushed Rachel in the chest, okay? Rachel claims I pushed her in the back so, obviously, that's contradictory evidence right there. Um, Mary Lou claims to be within one foot - one foot area and I shoved somebody and she felt nothing, heard nothing or saw nothing. I found that very, very peculiar. Um, Rachel claims there was a wrist hold. Not one of the witnesses saw the wrist hold because the wrist hold did not exist. I do not have the agility to catch my - catch my cat running out the door, never mind grabbing somebody's wrist in the middle of a scuffle. Um, as far as her so called scratches or injuries, it could be believed that she did it to herself when she ran into the washroom or

5 that she had these marks on her arm from
precariously standing on that toilet and
sticking her hand over to an area where there
was construction being done and rough edges
and with a pipe sticking out. She could have
very easily scratched her wrist when she was
doing that. Um, basically, my defence is that
she made up the story of the assault,
10 encouraged these witnesses that don't seem to
have a huge background or ability to
comprehend what's, necessarily, going on.
There was a lot of contradictory evidence
from, um, Mary Lou. I don't think her memory
can be counted on very well. Um, Mary Lou, by
15 the way, did admit to me asking about, uh,
Rachel getting out of the bathroom after she
had said earlier that I didn't say that to her
so that was another contradictory piece of
evidence. Um, would also like to state what
20 chances does the court think that in the
middle of a scuffle a wallet and a cell
phone(sic) is going to happen to fall right
back into the bag that it came out. I find
that difficult. Nobody saw a cell phone
charger or a wallet on the floor. Um, what
25 else? For an assault to be an assault, you
have to had intention on doing it. I had no
intention on harming her, in any way. I knew
that she was pregnant, even though she was
hiding it from everybody else and the text
30 messages show that, too. Um, her motive in
accusing me of assault was to shift the blame

from herself so that she could falsely attribute a crime to myself so that she could get away with stealing this phone charger. I mean, she's stealing from a 12 year old girl who - who, uh, collects liquor bottles from the neighbours for extra cash, okay, and saved up for this cell phone to buy herself and now she can't use her cell phone because it's so hard to find a charger for, okay, and she told the police that she did not steal the charger. I find that to be a false statement and my daughter, I must state, used to run around talkin' about how hot and good looking these police officers are but now she wants to spit on them but she's been ensured that if you spit on a police officer, that is assault and cannot do that. She was almost hit by a car on the way home from school a few weeks after this happened. She came home shaking and crying. She would not let me call the police because "the police will not believe me, Mommy," okay. Children's Aid was very concerned, thought that that was not a very good precedent to be setting. I find it difficult for the police to believe...

THE COURT: I....

ANDREA ARMSTRONG: ...a homeless....

THE COURT: I am not interested in what the police believe.

ANDREA ARMSTRONG: Well, anyway, um, - and statements had changed from the officer's notebook. The one witness saying that,

Not
mentioned
in CAS
records

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Submissions by Andrea Armstrong
Reasons for Judgment - Collins, J.

apparently, she had seen me hit and then her other statement saying that she hadn't which means they really only had one witness that saw hit - that she didn't see because the accused said I hit her from the back and this witness says I hit her from the front shoulder area. Didn't happen. I'm sorry that it's wasted a lot of taxpayers' time and money and taking so much time away from my kids.
THE COURT: Thank you.

REASONS FOR JUDGMENT

COLLINS, J. (Orally):

The defendant has been charged with assault, level one. The event occurred at a warming room in the City of Peterborough. The complainant, Rachel Carkner, was heavily pregnant at the time. She had just come out of hospital, in fact, and soon after this event went back into hospital. She was seated we are told at a computer in what must be the main room at the community drop-in centre known as Our Space. We are told that the room, in fact, is larger than this courtroom which is 44 feet by 25 feet. The complainant says that the defendant approached from behind shouting and screaming and gave her, that is Rachel, a fairly heavy push that almost caused her to fall off the chair. She says that as she caught her balance, she noticed the defendant reaching into Rachel Carkner's bag

Trial Concludes with WRONGFUL CONVICTION

